

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 502.605(1), the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

These amendments propose a new rule 191—50.54(502) and amendments to subrules 50.16(2) and 50.38(1) to include a reference to the proposed new rule which prohibits the use of a senior-specific certification or designation in connection with the offer, sale or purchase of securities or the provision of advice as to the advisability of investing in, purchasing or selling securities. Publications, issuance or promulgation of writings, analyses or reports relating to securities that indicate or imply that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person shall be a dishonest and unethical practice in the securities business. The rule provides examples of misleading designations. The rule is based on a model developed by the North American Securities Administrators Association. The rule complements a similar rule for insurance producers developed by the National Association of Insurance Commissioners.

Any interested person may make written comments on the proposed rule on or before October 14, 2008. Written comments may be sent to Craig Goettsch, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515)281-3059 or electronically to craig.goettsch@iid.iowa.gov.

These amendments are intended to implement Iowa Code section 502.605(1).

The following amendments are proposed.

ITEM 1. Adopt the following **new** paragraph **50.16(2)"j"**:

j. Engaging in conduct deemed dishonest or unethical in rule 191—50.54(502).

ITEM 2. Adopt the following **new** paragraph **50.38(1)"y"**:

y. Engaging in conduct deemed dishonest or unethical in rule 191—50.54(502).

ITEM 3. Adopt the following **new** rule 191—50.54(502):

191—50.54(502) Use of senior-specific certifications and professional designations.

50.54(1) The use of a senior-specific certification or designation by any person in connection with the offer, sale, or purchase of securities or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicate or imply that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of Iowa Code section 502.412(4) "m." The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

a. Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

b. Use of a nonexistent or self-conferred certification or professional designation;

c. Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

d. Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(1) Is primarily engaged in the business of instruction in sales or marketing;

(2) Does not have reasonable standards or procedures for ensuring the competency of its designees or certificants;

(3) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(4) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

50.54(2) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of 50.54(1) “d” when the organization has been accredited by:

a. The American National Standards Institute;

b. The National Commission for Certifying Agencies; or

c. An organization that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes” and the designation or credential issued therefrom does not primarily apply to sales or marketing.

50.54(3) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the administrator shall consider the following factors:

a. Use of one or more words such as “senior,” “retirement,” “elder,” or similar words combined with one or more words such as “certified,” “registered,” “chartered,” “adviser,” “specialist,” “consultant,” “planner,” or similar words in the name of the certification or professional designation; and

b. The manner in which those words are combined.

50.54(4) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

a. Indicates seniority or standing within the organization; or

b. Specifies an individual’s area of specialization within the organization.

For purposes of this subrule, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

50.54(5) Nothing in this rule shall limit the administrator’s authority to enforce existing provisions of law.

This rule is intended to implement Iowa Code section 502.605(1).